

OCT 21 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CRAIG LEE CLEMENTS,

Defendant - Appellant.

No. 02-50569

D.C. No. CR-01-02118-BTM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Argued and Submitted September 11, 2003
Pasadena, California

Before: KLEINFELD, WARDLAW, and W. FLETCHER, Circuit Judges.

Clements appeals the district court's denial of his motion to dismiss his probation revocation proceedings. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Clements moved to dismiss his probation revocation proceedings on the ground that his revocation hearing was not held “within a reasonable time” under Fed. R. Crim. P. 32.1(a)(2) (2001). The Advisory Committee Notes to then-Rule 32.1(a)(2) state: “Ordinarily this time will be measured from the time of the probable cause finding (if a preliminary hearing was held) or of the issuance of an order to show cause.” On November 19, 2001, the district court issued a bench warrant for Clements’s arrest and an order to show cause why his probation should not be revoked for alleged violations. The arrest warrant was not executed until May 20, 2002, and the order to show cause was heard on June 21, 2002.

That delay was not unreasonable under the circumstances. *See United States v. Hill*, 719 F.2d 1402, 1404-05 (9th Cir. 1983); *United States v. Hamilton*, 708 F.2d 1412, 1415 (9th Cir. 1983). The warrant was executed within Clements’s probationary period and he suffered no prejudice.

AFFIRMED.